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**VIA FACSIMILE****CQ84**

August 23, 2002

NEPA Task Force  
P.O. Box 221150  
Salt Lake City, UT 84122

**Subject: National Environmental Policy Act Task Force; Notice and Request  
for Comment 67 Fed. Reg. 45510 (July 9, 2002)**

On May 20, 2002, The Council on Environmental Quality (CEQ) formed a National Environmental Policy Act (NEPA) task force to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. The CEQ in the above referenced Federal Register notice has requested comments on the proposed nature and scope of NEPA Task Force activities. Duke Energy offers the following comments in response to that request.

Duke Energy is a global energy company, headquartered in Charlotte, North Carolina. Duke Energy operates in 18 countries around the world, producing, transporting, and marketing energy products. In the U.S., Duke Energy companies operate a large portfolio of natural gas gathering and processing facilities and interstate natural gas transmission pipelines. Duke Energy companies also operate a diverse mix of electric generating facilities that include natural gas, coal, nuclear, and hydro assets. Duke Energy's current portfolio of U.S. hydroelectric assets is part of the Duke Power and Nantahala Power and Light franchised electric operations. The assets are located in central and western North Carolina and western South Carolina. The following comments focus on the current NEPA practices related to the hydroelectric relicensing process.

Duke Energy recommends that the task force review and amend the current NEPA practice in the hydroelectric relicensing process. Hydropower constitutes 15% of Duke Power's current generating capacity, and delivers 15-25% of each day's peak load. Duke Power is facing the relicensing of over 80% of its hydro facilities by 2008.

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The extensive record developed in Congressional hearings over the past three years, as well as the FERC's report to Congress on licensing process improvements pursuant to Section 603 of the Energy Act of 2000,<sup>1</sup> show the need for reform of this cumbersome multi-agency process. Reform of the NEPA process can form an integral part of the solution to reduce the cost and time of the licensing process, which is a priority of President Bush's Energy Plan. Specifically, Duke Energy recommends changes to the NEPA process described as follows:

### **One-Step NEPA Document**

The Federal Energy Regulatory Commission should allow every license applicant to conduct NEPA scoping as part of the pre-filing consultation process and submit a draft NEPA document in lieu of Exhibit E of the license application. Under the Commission's Traditional Licensing Process, an applicant conducts a three-stage consultation with state and federal resource agencies regarding its license application, then prepares and submits an environmental review (referred to as Exhibit E) with the license application. Once the application has been submitted, the Commission essentially starts over by conducting a second review of the license application pursuant to NEPA that includes additional study requests, scoping of issues and public participation, and ultimately issuance of draft and final NEPA documents. Allowing applicants to conduct NEPA scoping and prepare draft NEPA documents would eliminate the need for the duplicate environmental reviews. Currently, however, the Commission's regulations only allow applicants to prepare draft NEPA documents under the Alternative Licensing Process ("ALP"). The Commission should eliminate the restriction on applicant-prepared draft NEPA documents and allow all applicants to replace the three-stage consultation process and Exhibit E with a one-step, pre-filing NEPA process in both traditional and alternative licensing processes.. Once the applicant has filed its draft NEPA document, the Commission would make whatever changes it deems necessary, as is done currently in the ALP. Interested parties, of course, will have full opportunity to comment and intervene. Thus, the Commission would in no way be shunning its NEPA responsibilities.

### **Require NEPA Documents to Include All Conditions**

In most licensing proceedings, numerous state and federal agencies are authorized to impose conditions or make recommendations pursuant to the FPA, the ESA, the Clean Water Act, the Federal Land Policy and Management Act, the National Historic Preservation Act, and other statutes. Under the Commission's regulations, most resource agencies are not required to submit final conditions and recommendations until after the

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<sup>1</sup> *Report on Hydroelectric Licensing Policies, Procedures, and Regulations: Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000*, FERC Staff, May 2001.


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Commission has issued its draft NEPA document. Moreover, in practice, final conditions and recommendations are often not submitted until after the Commission has issued its final NEPA document. Consequently, the conditions and recommendations are "piled on" late in the process and are often not reflected in the Commission's review under section 10(a)(1) of the FPA. To address this problem, the Commission should require submission of conditions prior to authoring either its preliminary or final NEPA document. Coupled with the previous recommendation, this would ensure that the license, as modified by the conditions and recommendations, continues to satisfy the public interest standard of section 10(a)(1) of the FPA. It would also secure a more timely and coordinated process that has been documented to be so urgently needed.

The NEPA process is only one among several urgently needed reforms to the hydroelectric licensing process (please reference our October 30, 2002 letter providing comments of Duke Energy Corporation to the CEQ Energy Task Force in response to Executive Order 13212 ). Duke Energy commends the Administration and the CEQ for its initiative to streamline the process. Duke Energy appreciates the opportunity to submit these comments, and is prepared to work with CEQ and the other task force members on this important effort. If we can provide further information or assistance as the CEQ pursues this initiative, please do not hesitate to contact Mr. Mark Oakley at 704-382-5778.

Sincerely,



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# Facsimile Memorandum

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Subject: Notice & Request for Comment

Date: 8-23-02 No. Pages (incl. cover) 4

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